

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHURCH AMERICA, et al.,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 01-9-B-S
)	
VEAZIE POLICE DEPT., et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

William M. Wolffe filed a complaint *pro se* on his own behalf and on behalf of the “Church America Society of Friends” against the Veazie Police Department, Veazie Police Chief Robert O’Halloran, and Veazie Police Officer John Knappe. I granted Wolffe leave to proceed *in forma pauperis*, but cautioned him that he would have to amend his 42 U.S.C. § 1983 complaint in various respects if he intended to proceed with this action. (Docket No. 4.) Wolffe has not amended his complaint by the date set in my order and I now recommend that the Court **DISMISS** the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) as it fails to state a claim on which relief may be granted.

Standard of Review

In analyzing these pleadings, the plaintiff’s allegations are accepted as true, and all reasonable inferences are drawn in his favor. *Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1st Cir. 1997). I need not, however, give credence to “bald assertions” or “unsubstantiated conclusions.” *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990). At this threshold stage I do review the *pro se* complaint according to a

“less stringent” standard than I would apply to a lawyer-drafted complaint. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

Discussion

For purposes of this discussion, the only plaintiff in the above-captioned matter is William M. Wolffe. As I indicated in my earlier order, Wolffe cannot bring a claim on behalf on Church America and Society of Friends, which he alleges are charitable “religious corporations” under the laws of the State of Maine and Internal Revenue Service provisions. *See Rowland v. Cal. Men’s Colony*, 506 U.S. 194 (1993)(recognizing the majority rule that prohibits corporations, partnerships, or associations from appearing in federal court “otherwise than through a licensed attorney,” linking the right to proceed *in forma pauperis* to this limitation, concluding that in a § 1983 case only natural persons could so proceed); *In re Victor Publishers, Inc.* 545 F.2d 285, 286(1st Cir.1967) (“Although an individual has a statutory right to represent himself in federal court even if he is not a lawyer, a corporation may be represented only by licensed counsel.”) (citation omitted); *Church of the New Testament v. United States*, 783 F.2d 771, 773-74 (9th Cir.1986) (unincorporated association cannot appear pro se); *see also* Dist. Me. Loc. R. 83.1(c) (under local rule a party – including a legal entity¹ -- may only appear through an attorney who has been admitted to the bar of this Court); *see cf.* 4 M.R.S.A. § 807(3)(A) – (M)(West Supp. 2000) (appearing on behalf of a plaintiff religious corporation not among the enumerated exceptions to the unauthorized practice of law). Therefore, I disregard the complaint to the extent that it seeks equitable or monetary relief on behalf of the churches or religious associations.

¹ *See* 1 U.S.C. § 1 (defining “person” for purposes of acts of Congress as including “corporations, companies, associations, firms, partnerships, societies and joint stock companies as well as individuals”).

A. Defendants Veazie Police Department and Police Chief Robert O'Halloran

In the body of his complaint Wolffe uses the word “Defendants” on a number of occasions, but he does not spell out what the Veazie Police Department or Police Chief Robert O'Halloran may have done to him. Officer John Knappe, the sole actor identified in the body of the complaint, allegedly took Wolffe into custody by transporting him to the Veazie Police Department. I therefore infer that the police department and the chief have been sued as Officer Knappe's employer and supervisor respectively.

To the extent Wolffe seeks to impose liability upon the Veazie Police Department by virtue of its status as the employer of the other named defendants, Wolffe's claims fail for two reasons. First, police departments are not “persons” within the meaning of § 1983. *See Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989) (“We hold that neither a State nor its officials acting in their official capacities are “persons” under § 1983.”). Second, there is no respondeat superior, or supervisory, liability under § 1983. *Monell v. Dept. of Soc. Serv.*, 436 U.S. 658, 691 (1978) (“[W]e conclude that a municipality² cannot be held liable solely because it employs a tortfeasor--or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory.”). As there is no supervisory liability under § 1983, the claim against O'Halloran fails as well.

B. Defendant John Knappe

Amongst Wolffe's conclusory allegations is the sole factual assertion that on or about August 8, 2000, Police Officer John Knappe took Wolffe to the Veazie Police Department against his will for the purposes of copying seized records and questioning

² Notably, Wolffe has not named the municipality as defendant. *See Monell*, 436 U.S. at 691 (holding that local governments can be subject to § 1983 actions).

him about his activities. Wolffe provides no context as to why or under what circumstances he was taken to the Veazie Police Department. The mere fact that a police officer takes someone into custody, transports him to a police station, and then interrogates him does not make out a constitutional violation. *See, e.g., Cruz-Erazo v. Rivera-Montanez*, 212 F.3d 617, 621-24 (1st Cir. 2000)(analyzing § 1983 plaintiffs' claims of ongoing verbal harassment and intimidation by the police, affirming the dismissal of the complaint on the grounds that it did not meet the "shock the conscience" standard required for stating a substantive due process claim under the Fourteenth Amendment); *Britton v. Maloney*, 196 F.3d 24, 28-30 (1st Cir. 1999)(discussing malicious prosecution in light of the Fourth Amendment). Similarly, seizing and searching personal property of individuals in police custody does not necessarily implicate constitutional violations.³ If Wolffe wants to proceed on his complaint against Knappe he simply must provide some context and detail as to what he alleges that Knappe did that violated his constitutional rights pursuant to the First, Fourth, Fifth, and Fourteenth Amendments, the alleged basis of his § 1983 claim.

Conclusion

Based upon the infirmities outlined above, I recommend that the instant complaint be **DISMISSED** for failure to state a claim.

³ Wolffe may have been "seized" within the meaning of the Fourth Amendment, *see Britton*, 196 F.3d at 29-30 (discussing level of restriction constituting a "seizure," observing that the § 1983 plaintiff proceeding on an unreasonable seizure theory must provide evidence that he was "arrested, detained, restricted in his travel, or otherwise subject to a deprivation of his liberty"), but his burdens of pleading and proof go far beyond his "charge" that the defendants subjected him to "false arrest and detention" by "taking [him] to the Veazie Police Department against [his] will, locking and securing [him] in Officer John Knappe's office for a lengthy time period, for purpose of copying all [his] seized records." To state a claim under the Fourth Amendment Wolffe must plead facts that would support a conclusion that the seizure was "unreasonable." Likewise, Wolffe's allegation that the defendants perpetrated a "criminal forcible entry and search of [his] entire living area and draws (*sic*) of furnishings, and seizure of personal property" against his will and without his consent describes a "search" but does not plead facts that would provide a basis for a determination that the search was unreasonable within the meaning of the Fourth Amendment.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated this 7th day of February, 2001.

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-9

CHURCH AMERICA, et al v. VEAZIE POLICE DEPT, et al Filed: 01/18/01

Assigned to: Judge GEORGE Z. SINGAL

Demand: \$0,000

Nature of Suit: 440

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 28:1331 Fed. Question: Civil Rights Violation

CHURCH AMERICA

plaintiff

SOCIETY OF FRIENDS

plaintiff

WILLIAM M WOLFFE

WILLIAM M WOLFFE

plaintiff

[COR LD NTC pro] [PRO SE]

c/o Stucco Lodge

1382 State Street

Veazie, ME 04401

207 942-4817

v.

VEAZIE POLICE DEPT

defendant

POLICE CHIEF, VEAZIE, Robert

O'Halloran, in his official

capacity as Police Chief of

Veazie, Maine

defendant

JOHN KNAPPE, In his official

capacity as a police officer

of Veazie, Maine

defendant